IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

(1) CRIMINAL MISC.APPLICATION No 1038 of 2001
(2) CRIMINAL MISC.APPLICATION No 1278 of 2001
(3) CRIMINAL MISC.APPLICATION No 3760 of 2001
(4) CRIMINAL MISC.APPLICATION No 4865 of 2001
and
(5) CRIMINAL MISC.APPLICATION No 5285 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JASABHAI BARAD

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 1038 of 2001
MR AD SHAH for Petitioners

2. Criminal Misc. Application No.1278 of 2001
Mr. P.M. Thakker, Senior Advocate, with
Mr. N.M. Amin for the petitioner.

3. Criminal Misc. Application No.3760 of 2001
Mr. Yatin N. Oza, Senior Advocate, with
Mr. R.s. Sanjanwala, for the petitioner

4. Criminal Misc. Application No.4865 of2001
Mr. K.S. Nanavati, Senior Advocate, with

Mr. Nandish Chudgar, for M/s. Nanavati Associates,
for the petitioner
5. Criminal Misc. Application No.5285 of 2001
Mr. N.D. Nanavati, Senior Advocate for
M/s. Nanavati Advocates for the petitioners

In all the matters:

Advocate General, Mr. S.N. Shelat, with
Additional Public Prosecutor, Mr. Samir Dave for the
respondent No.1-State Government
Mr. M.R.Shah, Additional Standing Counsel, for the
respondent No.2-Central Bureau of Investigation

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 11/12/2001

COMMON C.A.V. JUDGMENT

1. The abovenumbered Criminal Misc. Applications are filed under the provision of Section 482 of the Code of Criminal Procedure, 1973 ('Code' for short) by the petitioners, who are public servants and private transport contractors, to quash the complaint being Regular Case No.31()/2000-GNR registered at the Central Bureau of Investigation, Gandhinagar Branch, on November 15, 2000, against the petitioners public servants and transport contractors for commission of offences punishable under Sections 120B, 420 of the Indian Penal Code and Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 ('Act' for short).

2. The background of the case is as under:

The Government of Gujarat had carried out an internal enquiry into the allegations that during the year 1997-98 huge monetary loss was caused to the Government of Gujarat and Gujarat State Civil Supplies Corporation (GSCSC) by the accused public servants by awarding a disproportionate hike in the contractual rates of transportation of levy sugar and food grains to support the Public Distribution System (PDS) causing corresponding ineligible gains to transporters. Shri Arvind Agarwal, IAS, Director (Civil Supplies) & Jt. Secretary to the government conducted the fact finding enquiry and submitted his report on 12-5-1998 to the Government of Gujarat confirming the above allegation. He further concluded that the extension of the period of

contract was granted permitting the transporters to continue transportation at the increased rates for another year was unjustifiable and unwarranted and was also not in the public interest. The enquiry report brought out a prima facie case of criminal misconduct on the part of public servants and hence the government decided to carry out a criminal investigation into the matter. Apparently, for seeking a fare and impartial investigation, the Government of Gujarat vide letter No.LRV-1198-OD-33-H, dated December 2, 1998, requested the Government of India to order an investigation by the Central Bureau of Investigation (CBI). The Government of India, Department of Personnel & Training vide ID NMo.228/24/00-ADV.II dated April 16, 1999 requested the CBI to carry out an investigation into the allegations. Looking to various issues like the possible political overtones, identity of the public servants involved, CBI as a matter of abundant precaution decided to look into the matter afresh before taking cognizance of the complaint. Accordingly, PE No.10(A)/99/GNR was registered in CBI, Gandhinagar Branch, on May 31, 1999 and the allegations were enquired into. The preliminary enquiry, prima facie, revealed the commission of offences of criminal conspiracy, cheating and criminal misconduct and hence Regular Case No.31(A)/2000-GNR was registered on November 15, 2000 against the accused public servants and transport contractors for commission of offences punishable under Sections 120B, 420 Indian Penal Code and Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

3. The Government of Gujarat and the Gujarat State Civil Supplies Corporation after following the prescribed procedure awarded transport contracts to the private transport contractors in 1997-98 for transportation of levy sugar and food grains to support the public distribution system. It is alleged in the First Information Report that during the year 1997-98, subsequent to the award of contract, the petitioners Ministers and other public servants, while working in respective capacities, entered into criminal conspiracy with the private transport contractors and in furtherance thereof abusing their official position allowed unjustifiable and arbitrary increase in the existing contractual rates of transportation in violation of the terms and conditions of the agreement and also unjustifiably and arbitrarily extended the period of contract by one year upto March 31, 1999 and thereby caused wrongful pecuniary loss to the Government and corresponding wrongful gain to private transport contractors to the tune of Rs.6.40 crores.

4. While the investigation was in progress, Shri Jasabhai Barad, the then Minister, Food, Civil Supplies & Consumer Affairs, and Shri Vithalbhai Shah, the then Minister of State, Food, Civil Supplies & Consumer Affairs, have filed Criminal Misc. Application No.1038 of 2001 in this High Court to quash the First Information Report being Crime No. RC 31(A)2000-GNR registered on November 15, 2000, and to restrain the Central Bureau of Investigation ('CBI' for short) from conducting further investigation. Subsequently, Shri A.M. Bhardwaj, IAS, the then Additional Chief secretary, Food, Civil Supplies & Consumer Affairs Department, has filed Criminal Misc. Application No.1278 of 2001 praying for the similar reliefs. In both the above Criminal Misc. Applications, the Court had granted ad-interim relief in favour of the petitioners restraining the CBI from proceeding further with the investigation of the case. Thereafter, Shri D. Kishore Rao, IAS, the then Director (Food), and Shri Vijaysinh Parmar, IAS (Retd.), the then Managing Director, Gujarat State Civil Supplies Corporation ('GSCSC' for short), have filed Criminal Misc. Application No.3760 of 2001 and Criminal Misc. Application No.4865 of 2001 respectively praying for the similar reliefs. Similarly, the private transport contractors have filed Criminal Misc. Application No.5285 of 2001 in this Court for quashing the First Information Report and restraining the CBI from carrying out further investigation. All the abovenumbered Criminal Misc. Applications came to be consolidated and were heard together at length on June 19, 2001 by the Court (Coram: B.J. Shethna, J.). During the hearing, the learned Additional Standing Counsel, Mr. M.R. Shah, representing the CBI, submitted that, before registration of the First Information Report, the CBI had taken necessary precaution looking to the possible political overtones, etc by carrying out a preliminary enquiry into the allegations and in that process had examined relevant witnesses and collected the material documents. On the basis of the preliminary enquiry conducted by the CBI, the Court, by its order dated June 19, 2001, directed the CBI to produce the records of the preliminary enquiry and to file an affidavit by June 28, 2001 highlighting the role played by each of the petitioners in the commission of the alleged offences. Accordingly, on June 27, 2001, a detailed affidavit in reply was filed by Mr. Jagroop Meena, Deputy Superintendent of Police, CBI. The preliminary enquiry prima facie disclosed that the acts and omissions on the part of the suspect public servants (including the Ministers) and the private transport contractors constitute criminal offence warranting an

open investigation and registration of the case and its investigation was a logical and legal follow up. The record of the present case further indicates that all the Criminal Misc. Applications were heard at length on different dates and, after the hearing and perusal of the documents and the statements recorded during the Preliminary Enquiry, the Court (Coram: B.J. Shethna, J.) in its order dated July 10, 2001, in paragraphs 11 and 12, has observed as under:

"11. Before proceeding further with the hearing of the matter consensus was arrived at between learned counsel for the parties that the investigation which has been stayed earlier by this court in some of the matters be permitted to be carried out so as to be over latest by 8.8.2001 and before submitting the report to the higher authority the relevant material be placed before this court and only after obtaining the permission from this court they may proceed further in the case otherwise not with the condition that all the present petitioners-accused shall fully cooperate during the investigation.

12. Accordingly, interim relief granted in some of the petitions restraining respondent CBI from carrying out the investigation in pursuance of the impugned FIR is modified to the extent that the CBI is permitted to proceed with the investigation and conclude it latest by 8.8.2001 and place the entire material with relevant papers before this Court on 9.8.2001 before submitting the same to the higher authority for obtaining sanction to prosecute the present petitioners. All the petitioners accused are accordingly directed to fully cooperate with the investigation and they shall not be arrested without the prior permission of the court."

5. Accordingly, after the ad-interim relief was modified by the Court, the investigation had resumed. As the time granted by the Court to conclude the investigation was inadequate, the Investigating Officer had moved the High Court to seek extension of time while submitting the status report of the case on August 9, 2001. The Court, vide its order dated August 9, 2001, had expressed its satisfaction with the progress of the investigation and had granted extension of time for two months to complete the investigation. Accordingly, the CBI has completed the investigation and has submitted a detailed investigation report along with the statements and the evidence collected during the investigation, to this Court on October 12, 2001.

6. Criminal Misc. Application No.8380 of 2001 was filed in Criminal Misc. Application No.3760 of 2001 by the applicant, D. Kishore Rao, inter alia, praying that the investigation report and the material supplied by the CBI to this Court be supplied to the applicant and other petitioners so that they can represent their case for quashing the First Information Report and the investigation properly. This Court, by its order dated October 23, 2001, rejected the Criminal Misc. Application No.8380 of 2001 to supply copies of the investigation report and other materials collected by the CBI during the investigation and it was ordered that all the abovenumbered Criminal Misc. Applications be heard together on November 2, 2001. Accordingly, all the abovenumbered Criminal Misc. Applications were heard thereafter and the hearing was concluded on November 9, 2001. As the Court was to close for Diwali vacation from November 10, 2001, the Court reserved the order for pronouncement.

7. Learned counsel, Mr A.D. Shah, representing petitioners, Shri Jasabhai Barad and Shri Vithalbhai Shah (Ex-Ministers), in Criminal Misc. Application No.1038 of 2001, has submitted that in the First Information report, except the averments of conspiracy, cheating and abuse of official position, there are no factual data disclosed for commission of the offences. It is submitted by the learned counsel Mr. A.D. Shah that the First Information Report does not disclose the ingredients of the offence under Section 420 of the Indian Penal Code. It is submitted by the learned counsel Mr. A.D. Shah that no allegations of misrepresentation, inducement or dishonest intention have been made in the First Information Report and, therefore, the First Information Report registered with the CBI deserves to be quashed. The learned counsel Mr. A.D. Shah in support of his submission has placed reliance on the decision of the Supreme Court in the case of (i) Alpic Finance Limited vs. P. Sadasivan and another, reported in JT 2001 (2) SC 588, wherein the Apex Court has ruled that, "to bring home the offence of cheating it must be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There being no allegation of any wilful misrepresentation or fraudulent inducement nor any element of deception in the whole transaction, the High Court was justified in quashing the criminal proceedings." The learned counsel Mr. A.D. Shah has placed reliance on the decision of the Supreme Court in the case of (ii) State of West Bengal and others vs. Swapan Kumar Guha and others, reported in AIR 1982

Supreme court 949, in support of the submission that, if the First Information Report does not disclose commission of cognizable offence, the High Court was justified in quashing the investigation. It is further ruled that whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. That, if on a consideration of relevant materials the Court is satisfied that no offence is disclosed, it will be the duty of the Court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual. Learned counsel Mr. A.D. Shah has also placed reliance on the decision of the Supreme Court in the case of (iii) State of U.P. vs. R.K. Srivastava and others, reported in AIR 1989 Supreme Court 2222, in support of the submission that if no allegations are made in the First Information Report, disclosing that the accused bank employees had no intention whatsoever to make any wrongful gain or to make any wrongful loss to the Bank in accepting certain cheques and that neither the First Information Report nor the chargesheet showed that the bank employees or the client had acted dishonestly, that is to say, acted with a deliberate intention to cause wrongful gain or wrongful loss, nor did the allegations constitute any offence of cheating or forgery, it amounted to an abuse of the process of the Court and the criminal proceedings were therefore liable to be quashed in exercise of powers under Section 482 of the Code of Criminal Procedure. The learned counsel, Mr. A.D. Shah, has also placed reliance on the decision of the Supreme Court in the case of (iv) Hridaya Ranjan Pd. Verma and others vs. State of Bihar and another, reported in 2000 Criminal Law Journal 2983, in support of the submission that, to hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning that is when he made the promise cannot be presumed. The reliance is also placed on the decision of the Supreme Court in the case of (v) State of Karnataka vs. Arunkumar Agarwal and others, reported in AIR 2000 Supreme Court 411, in support of the submission that the acts of the person will not be subject of criminal investigation unless a crime is reported to have been committed or reasonable suspicion thereto arise. On a mere conjecture or surmise as a flight of fancy that some crime might have been committed, somewhere, by somebody but the crime is not known, the persons involved in it or the place of crime unknown, cannot be termed to be reasonable basis at all for starting a criminal

investigation. In the above case, the Supreme Court had quashed order passed by High Court which ordered C.B.I. probe into alleged kickbacks paid for alleged favours shown to M/s. Cognetrix Inc. established in U.S.A. in connection with the setting up of thermal power plant of 1000 MW capacity at Mangalore mainly on the grounds that none of the thirteen circumstances noticed by High Court can give rise to any suspicion. Muchless a basis for investigation by a criminal investigating agency.

8. After the arguments were heard by this Court, the learned advocate, Mr. N.M. Amin, who has appeared for the petitioner, Mr. A.M.Bhardwaj, has filed a note requesting this Court that the petitioner, Mr. A.M. Bhardwaj, does not want to press Misc. Criminal Application No.1278 of 2001 and he may be permitted to withdraw the application at this stage without prejudice to his rights and contentions and reserving the liberty to raise the same as and when necessary. In view of the request made by the learned advocate for the petitioner, Mr. A.M. Bhardwaj, the submissions made by the learned Senior Advocate, Mr. P.M. Thakkar, in the Misc. Criminal Application No.1278 of 2001 filed by the petitioner, Mr. A.M. Bhardwaj, are not dealt with and discussed. The permission is granted to the learned advocate Mr. N.M. Amin to withdraw Misc. Criminal Application No.1278 of 2001 at this stage without prejudice to his rights and contentions and reserving the liberty to the petitioner to raise such contentions as and when necessary. Misc. Criminal Applicatin No.1278 of 2001 stands dismissed as withdrawn. Rule is discharged. The interim relief stands vacated.

9. Learned Senior Advocate, Mr. K.S. Nanavati, who appears for the petitioner, Shri Vijaysinh Parmar, IAS (Retd), of Criminal Misc. Application No.4865 of 2001, who was at the relevant time discharging his duties as Managing Director, GSCSC, has submitted that the petitioner, Mr. Parmar, was serving as Managing Director of GSCSC from May 18, 1997 to April 16, 1998 and had retired from service with effect from December 31, 2000. It is submitted by learned Senior Advocate, Mr. K.S. Nanavati, that the petitioner, Mr. Parmar, had suggested 15% hike in price of transportation charges. It is submitted that, even in the affidavit in reply, the Investigating Officer had stated that rise of 11% should have been justified because of sudden rise in price of diesel. Learned Senior Advocate, Mr. K.S. Nanavati, relying on the averments made in the affidavit in reply, has submitted that there was no dishonest intention or any intention to cause monetary loss to the State

Government. The petitioner had only recommended 15% hike in price of transportation charges. It is submitted by the learned Senior Advocate Mr. K.S. Nanavati that there is no material or evidence against the petitioner to proceed further against the petitioner in the present case. Learned Senior Advocate, Mr. K.S. Nanavati, has also submitted that the petitioner, Mr. Parmar, has not suggested extension of contract period from April 19, 1998 to March 1999 and, therefore, he cannot be held responsible for causing any monetary loss or acting dishonestly so as to cause monetary loss to the State Government. It is further submitted by the learned Senior Advocate, Mr. K.S. Nanavati, that, in the representation made by the private transport contractors, they had given a threat to proceed on strike and if the transporters had proceeded on strike, there would have been total collapse in the supply of food-grains and levy sugar and it would have invited great criticism on the administration as the Diwali festival was fast approaching. It is submitted that even the Minister in-charge of Civil Supplies Department had given direction to complete the formalities within five days and, therefore, a decision was taken in a great haste due to pressure of the higher-ups and, therefore, there was no dishonest intention on the part of the petitioner, Mr. Parmar. Learned Senior Advocate, Mr. K.S. Nanavati, in the alternative, submitted that, even if the petitioner, Mr. Parmar, has suggested 15% hike in transportation charges, it can be at best said to be an error of judgment which will not attract provision of Section 13 of the Act nor Section 420 of the Indian Penal Code. It is submitted by the learned Senior Advocate that the First Information Report does not disclose prima facie ingredients of offences for which it was filed against the petitioner, Mr. Parmar, and, therefore, the First Information Report and the whole proceedings may be quashed. Learned Senior Advocate, Mr. K.S. Nanavati, has placed reliance on the decision of the Supreme Court in the case of Anil Kumar Bose vs. State of Bihar, reported in AIR 1974 Supreme Court 1560, wherein, it is held that, for the purpose of holding the accused guilty under Section 420 of the Indian Penal Code, the evidence adduced must establish beyond reasonable doubt mens-rea on the part of the accused. It is further ruled that, if there was an error of judgment or breach of performance of duty on the part of the accused, it could not per se be equated with dishonest intention which was one of the essential ingredients of offence of cheating under Section 420 of the Indian Penal Code.

10. Learned Senior Advocate, Mr. Yatin Oza, instructed by learned advocate, Mr. R.S. Sanjanwala, for the petitioner, Mr. D. Kishore Rao, the then Director, Department of Food & Civil Supplies, of Misc. Criminal Application No.3760 of 2001, has submitted that, no specific role has been attributed to the petitioner, Mr. D.Kishore Rao, in the First Information report or in the affidavit in reply filed by the Investigating Officer that the petitioner had dishonest intention to cause monetary loss to the Government and monetary gain to himself or to the private transport contractors in giving hike in price of transportation charges of levy sugar and food-grains. It is submitted by the learned Senior Advocate, Mr. Yatin Oza, that the First Information Report leads nowhere as no allegations have been levelled against the petitioner, Mr. D.Kishore Rao, of committing offence of cheating and criminal conspiracy and abusing position as public servant. Learned Senior Advocate, Mr. Yatin Oza, has vehemently submitted that the impugned First Information Report is a gross case of abuse of process of law and is filed as a result of political ill-will and malice. It is submitted that the petitioners, Mr.Jasabhai Barad and Shri Vithalbhai Shah, of Misc. Criminal Application No.1038 of 2001, originally belonged to Bhartiya Janata Party but later on joined Rashtriya Janata Party headed by Mr. Shankersinh Waghela who had at the relevant time formed a Government in the State of Gujarat. It is submitted that the petitioners, Mr.Jasabhai Barad and Shri Vithalbhai Shah, of Misc. Criminal Application No.1038 of 2001, were appointed as Ministers and it was during the course of discharge of such duties, the decision granting hike in transportation charge, which is subject matter of the impugned First Information Report, was taken. It is further submitted that, in the general election held in 1998, the Bhartiya Janata Party had secured majority and had formed Government and to wreck vengeance on the party which was earlier in power, the present First Information report was filed alleging corrupt practice against the Officers and the Ministers. It is submitted that the petitioner, Mr. D. Kishore Rao, has become the victim of the political rivalry between the BJP and the RJP. The learned Senior Advocate, Mr. Yatin Oza, has further submitted that the petitioner,Mr. D. Kishore Rao, had not taken any decision giving rise in transportation charges nor was he involved in decision making process and, therefore, the First Information Report deserves to be quashed against the petitioner. It is also submitted by the learned Senior Advocate, Mr. Yatin Oza, that, in the past, there was practice to consider increase in transportation charges and, in fact, in 1984, 1989 and

1991, such request for increase had been considered by the Government. It is further submitted that, due to sudden rise in the price of diesel, and due to the representation made by the private transport contractors, the decision to increase the rates in transport charges was taken by the Officers of the Department which was duly approved by the Ministers and there was no dishonest intention on the part of any of the Officers or the Ministers or to cause wrongful loss to the Government or wrongful gain to the transporters. It is further submitted by the learned Senior Advocate, Mr. Yatin Oza, that the First Information report does not disclose any of the ingredients of Sections 120B and 420 of the Indian Penal Code or section 13(i)(d) of the Act and, therefore also, the First Information Report deserves to be quashed.

11. Learned Senior Advocate, Mr. N.D. Nanavati, who appears for the petitioners (private transport contractors) of Criminal Misc. Application No.5285 of 2001, has submitted that the names of the petitioners, who are private transport contractors, have not been mentioned in the First Information Report, and there are no specific allegations against the petitioners. It is submitted that the private transport contractors due to rise in price of diesel had made representation demanding higher rate of transportation charges which cannot be called a conspiracy so as to attract the provisions of Section 120A of the Indian Penal Code. The First Information report and the allegations made therein do not prima facie establish ingredients of offences of Sections 120B and 420 of the Indian Penal Code against the petitioners and, therefore, the same deserves to be quashed. Learned Senior Advocate, Mr. N.D. Nanavati, has submitted that the private transport contractors had merely asked for higher rates and there was no inducement in making such demand. Learned Senior Advocate, Mr. N.D. Nanavati, has further submitted that the private transport contractors are not public servants and they have not achieved undue gain or caused monetary loss to the State Government, because they were awarded rise in price of transportation charges due to sudden rise in price of diesel and they were awarded hike in transportation charges because of service rendered by them of providing transportation facilities for transporting levy sugar and food-grains. Learned Senior Advocate, Mr. N.D. Nanavati, has further submitted that the allegations in the First Information Report do not, remotely, indicate how criminal conspiracy was hatched between the Ministers, Officers and the private transport contractors to commit the alleged illegal acts. Learned

Senior Advocate, Mr. N.D. Nanavati, has submitted that before filing of the First Information Report, twice preliminary enquiry was conducted - one by Mr. Agrawal, IAS, and another by the CBI. In spite of those enquiries, the First Information report was based on bald allegations without substantiating or ascertaining any facts or making out ingredients of offences, for which the First Information Report was filed. Learned Senior Advocate, Mr. N.D. Nanavati, has submitted that the basic ingredients of cheating as defined under Section 415 of the Indian Penal Code were missing in the First Information Report and, therefore, it deserves to be quashed. Learned Senior Advocate, Mr. N.D. Nanavati, has further submitted that there are many decisions taken by the Government which involve financial burden on the State Exchequer. By giving rise in transportation charges merely because the State had incurred financial loss, it cannot be said that a criminal act was committed by the Ministers, Officers and the transport contractors in absence of any factual foundation laid in the First Information Report. Learned Senior Advocate, Mr. N.D. Nanavati, has further submitted that because of change in party in power in the State, mala fide First Information Report was filed to take revenge against the previous government and the CBI is used as a stooge for settling the score between two rival political parties. Learned Senior Advocate, Mr. N.D. Nanavati, has further submitted that the present First Information Report was filed to dig out political vendetta and to wreck political vengeance against the previous party in power for which the private transport contractors had become unfortunate victims and, therefore, the First Information Report against them deserves to be quashed.

12. Learned Advocate General, Mr. S.N. Shelat, who appeared for respondent No.1, State of Gujarat, has submitted that, after the order for ad-interim relief was modified and the CBI was permitted to investigate into the allegations made in the First Information Report, now, it is not open for the petitioners to challenge the First Information Report contending that it does not disclose any ingredients of offences under Sections 120B and 420 of the Indian Penal Code and under Section 13(i)(d) of the Act. Learned Advocate General, Mr. S.N. Shelat has submitted that, when the Court has found that there was enough material and the allegations in the First Information Report were having substance and the Court having satisfied with the report of the preliminary enquiry had vacated the ad-interim relief and permitted the CBI to carry out further investigation and,

therefore, it is not open for the petitioners to agitate and challenge that the First Information Report does not disclose prima facie commission of offences for which it is filed. Learned Advocate General, Mr. S.N. Shelat has submitted that the inherent power of the Court under Section 482 of the Code should be exercised sparingly and cautiously, only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised. It is submitted that the inherent power can be used when the allegations in the First Information Report or the complaint together with other materials collected during investigation taken at their face value do not constitute offence alleged. It is submitted by the learned Advocate General, Mr. S.N. Shelat that after the Court had permitted the CBI to investigate and when the investigation is completed and the report submitted by the Investigating Agency makes out prima facie case against the petitioners, it is not open for this Court to exercise inherent powers under Section 482 of the Code of Criminal Procedure and quash the First Information report. Learned Advocate General, Mr. S.N. Shelat has placed reliance on the decision of the Supreme Court in the case of State of Bihar vs. Rajendra Agrawalla, reported in (1996) 8 Supreme Court Cases 164, wherein, the Supreme Court has ruled that the High Court was wholly unjustified in invoking its inherent power under Section 482 of the Code of Criminal Procedure to quash the cognizance taken inasmuch as the allegation in the First Information Report and material referred to in the charge-sheet do make out an offence under Section 414 of the Indian Penal Code. In the above decision, it is also ruled that, at the stage of exercising the inherent power of the Court under Section 482 of the Code of Criminal Procedure, it is not open for the Court either to sift the evidence or appreciate the evidence and come to the conclusion that no prima facie case is made out. Learned Advocate General, Mr. S.N. Shelat has also placed reliance on the decision of the Supreme Court in the case of State of Haryana vs. Bhajan Lal, reported in AIR 1992 Supreme Court 604, more particularly paragraph 108 page 629, wherein, the Supreme Court in category 3 has observed as under:

"3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out case against the accused."

Relying on the above guideline, the learned Advocate

General, Mr. S.N. Shelat has submitted that when the First Information Report and the evidence and the materials collected during investigation prima facie disclose commission of offence against the petitioners, the Court in exercise of the inherent powers cannot quash the First Information Report at the threshold. Learned Advocate General, Mr. S.N. Shelat has also submitted that, merely on the allegation made by the learned counsel for the petitioners that the complaint was filed due to mala fides and to wreck vengeance on the party which was in power previously, the First Information Report cannot be quashed, as per the following observation made by the Supreme Court in paragraph 114, page 630, in the case of Bhajan Lal (supra).

"Therefore, we are unable to see any force in the contention that the complaint should be thrown overboard on the mere unsubstantiated plea of mala fides. Even assuming that Dharam Pal has laid the complaint only on account of his personal animosity, that, by itself, will not be a ground to discard the complaint containing serious allegations which have to be tested and weighed after the evidence is collected. In this connection, the following view expressed by Bhagwati, CJ in Sheonandan Paswan vs. State of Bihar (1987) 1 SCC 288 at page 318: (AIR 1987 SC 877 at p.891) may be referred to:

'It is a well established proposition of law that a criminal prosecution, if otherwise, justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant.'

Beyond the above, we do not wish to add anything more."

Learned Advocate General, Mr. S.N. Shelat has also placed reliance on the decision of the Supreme Court in the case of State of Maharashtra vs. Ishwar Piraji Kalpatri and others, reported in (1996) 1 Supreme Court Cases 542, in support of the submission that if the complaint which is made is correct and an offence had been committed which will have to be established in a court of law, it is of no consequence that the complainant was a person who was inimical or that he was guilty of mala fides. If the ingredients which establish the commission of the offence or misconduct exist then, the prosecution cannot fail merely because there was an animus of the complainant or the prosecution against the accused. Allegations of mala fides may be relevant while judging the correctness of the allegations or while

examining the evidence. But the mere fact that the complainant is guilty of mala fides, would be no ground for quashing the prosecution. Learned Advocate General, Mr. S.N. Shelat has further submitted that, for attracting provision of Section 13 of the Act, it is not necessary that the public servant can be said to have committed offence of criminal misconduct by abusing his position and obtained pecuniary advantage for himself. Learned Advocate General, Mr. S.N. Shelat has invited my attention to sub-clause (ii) of Section 13(1)(d) of the Act, which provides that a public servant is said to commit the offence of criminal misconduct if he by abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage. Relying upon sub-clause (ii) of Section 13(1)(d) of the Act, the learned Advocate General, Mr. S.N. Shelat has submitted that, in the present case, the material collected during the investigation and the First Information Report prima facie disclose that the petitioners by abusing their position as public servants had obtained valuable thing or pecuniary advantage for other persons, namely, private transport contractors. It is, therefore, submitted by the learned Advocate General, Mr. S.N. Shelat that ingredients of Section 13(1)(d) are prima facie established and, therefore, the Criminal Misc. Applications deserve to be dismissed.

13. The learned Additional Standing Counsel, Mr. M.R. Shah, who appeared for the respondent No.2, CBI, has submitted that when the State Government had found out that some irregularities were committed in the Civil Supplies Department in giving the rise in transportation charges to the private transporters for transporting food-grins and levy sugar in the public distribution system, the preliminary enquiry was conducted and in that enquiry it was revealed that many serious irregularities and lapses were found to have been committed by the Ministers and the Officers concerned in causing undue advantage to the private contractors and wrongful loss to the Government. It was, therefore, decided to lodge a complaint against the erring public servants and the transport contractors who had hatched criminal conspiracy by causing monetary loss to the Government and corresponding monetary gain to themselves/private transport contractors. It is submitted that a notification giving consent to the CBI to investigate the case was issued on January 4, 1999 and as a result of that notification the CBI has conducted preliminary enquiry as per the procedure prescribed under the Delhi Special Police Establishment Act, 1946. On the basis of

the preliminary enquiry report, regular First Information Report was filed with the CBI, Gandhinagar, on November 15, 2000. The learned Additional Standing Counsel, Mr. M.R. Shah, has submitted that the First Information Report prima facie discloses commission of serious offences under Sections 120B and 420 of the Indian Penal Code read with Section 13(1)(d) of the Act and the said First Information Report was filed after the preliminary enquiry was held by the CBI. The learned Additional Standing Counsel, Mr. M.R. Shah, has further submitted that the complainant was not required to produce verbatim all the ingredients of offence alleged in body of the complaint and when the averments in the complaint prima facie make out case for investigation the complaint cannot be quashed at the threshold. In support of the above submission, the learned Additional Standing Counsel, Mr. M.R. Shah, has placed reliance on the decision of the Supreme Court in the case of Rajesh Bajaj vs. State NCT of Delhi, reported in 1999 AIR SCW 881. The learned Additional Standing Counsel, Mr. M.R. Shah, has also submitted that when cognizable offence stands disclosed in the First Information Report, interest of justice requires further investigation and it is domain of police department to investigate into offence and bring the offender to book. The learned Additional Standing Counsel, Mr. M.R. Shah, has further submitted that the criminal proceedings in the normal course of events ought not to be scuttled at the initial stage unless the same amounts to an abuse of the process of law. In support of the above submission, the learned Additional Standing Counsel, Mr. M.R. Shah, has placed reliance on the decision of the Supreme Court in the case of S.M. Data vs. State of Gujarat and another, reported in JT 2001 (6) Supreme Court 631. The learned Additional Standing Counsel, Mr. M.R. Shah, has further submitted that when the evidence collected during the preliminary enquiry held by the CBI before registering the First Information Report was produced before the Court, the Court was prima facie satisfied that the First Information Report disclosed commission of cognizable offence for which a detailed investigation was required to be conducted. The learned Additional Standing Counsel, Mr. M.R. Shah, has further submitted that therefore the Court by its order dated July 10, 2001, had directed the CBI to proceed with the investigation by modifying the ad-interim relief granted earlier. The learned Additional Standing Counsel, Mr. M.R. Shah, has further submitted that therefore it is not open for the petitioners now to contend that the First Information Report does not disclose ingredients of offences for which it was registered. The learned Additional Standing

Counsel, Mr. M.R. Shah, has vehemently submitted that the stage of quashing the First Information Report has already gone when the Court had found prima-facie case for investigation and, accordingly, the CBI had completed the investigation and produced a detailed report before the Court along with the materials and evidence collected during the investigation. The learned Additional Standing Counsel, Mr. M.R. Shah, has further submitted that the Court should look into the report and the evidence collected during investigation and, after going through the report and the evidence collected during the investigation, dismiss the present Criminal Misc. Applications. The learned Additional Standing Counsel, Mr. M.R. Shah, has prayed that the CBI may be directed to complete the formalities by obtaining sanction and thereafter to file the chargesheet in the competent court.

14. The submission of the learned Senior Advocates, who appeared on behalf of all the petitioners, that the allegations made in the First Information Report do not make out any offence under Sections 120B and 420 of the Indian Penal Code and Section 13(i)(d) of the Act and, therefore, the said First Information Report deserves to be quashed, is meritless and deserves to be rejected. As submitted by the learned Advocate General and the learned Additional Standing Counsel, the Court was satisfied with the report of the preliminary enquiry and the materials collected during the preliminary enquiry and came to the conclusion that the allegations made in the First Information Report deserved a detailed investigation and the Court, having satisfied that there was pre-planned conspiracy hatched by and between the petitioners public servants and the transport contractors to give a sudden rise in the contractual rates of transportation of levy sugar and food grains, had, by order dated July 10, 2001, directed the CBI. to carry on investigation by vacating and modifying the interim relief. It is, therefore, not open for the petitioners now to contend that the First Information Report does not make out any offence for which it was filed. As held in the case of Rajendra Agrawalla (supra), at the stage of quashing of First Information Report or the complaint, the Court has to take into consideration whether the allegations in the First Information Report and other materials collected during the investigation at their face value, make out any case against the petitioners. In my view, the allegations made in the First Information Report and the materials collected during the investigation prima facie prove the involvement of all the petitioners with the offences alleged against them in the First Information

Report and, therefore, the First Information Report cannot be quashed, as contended by the learned Senior Advocates for the petitioners.

14.1 Learned counsel, Mr. A.D. Shah, has placed strong reliance on the decision of the Supreme Court in the case of Alpic Finance Limited (supra), in support of the contention that the First Information Report must show that there existed a fraudulent and dishonest intention at the time of commission of the offence under Section 420 of the Indian Penal Code. In my view, the said decision of the Supreme Court in the case of Alpic Finance Limited (supra) will not be of any help to the petitioners. In the case of Alpic Finance Limited (supra) before the Supreme Court, there was only evidence in the nature of First Information Report and no other material was before the Supreme Court to decide whether the First Information Report prima facie established commission of offence. In this case, the First Information Report and the evidence and the materials collected during the investigation prima facie establish involvement of the petitioners with the offences alleged and, therefore, the said decision of the Supreme Court in the case of Alpic Finance Limited (supra) will not be of any help to the petitioners.

14.2 The other submission made by the learned Senior Advocates for the petitioners that, as the petitioners who were public servants had acted in discharge of their duties as such public servants and had only recommended the rise in contractual rates to the private transport contractors and there was no dishonest intention on their part, the First Information Report deserves to be quashed, is also meritless and deserves to be rejected. There is enough material collected by the CBI during investigation which prima facie shows that, without verifying genuineness of the representation filed by the transport contractors, the public servants had suggested hike in the contractual rates ignoring the rules of procedure provided in the Rules of Business and in flagrant violation of financial implications. The procedure adopted by the Purchase Committee was also in flagrant violation of the Rules of Business. The investigation carried out by the CBI, prima facie, proves the involvement that all the public servants have acted hands in glove with the transport contractors in giving price rise in the transport charges without taking care of the financial implications on the public exchequer. No opinion of the Financial Advisor was obtained. During the submissions of the learned Senior Advocates for the petitioners, each petitioner has tried to throw the

burden on other by contending that he was not responsible for the decision taken in giving rise in the contractual rates of transportation of levy sugar and food grains. The petitioners public servants had also ignored the clause 25 of the agreement entered into between the State Government and the private transport contractors that, during subsistence of the agreement, no rise in transportation charges can be given.

14.3 It was contended by the learned Senior Advocate, Mr. Yatin Oza, who appeared on behalf of Mr. D. Kishore Rao, that the Court had adopted unusual procedure in deciding the present applications by not providing copy of the investigation report and the materials collected by the Investigating Agency. The submission of the learned Senior Advocate, Mr. Oza, deserves to be rejected. The petitioner, Mr. D. Kishore Rao, had filed Misc. Criminal Application No.8330 of 2001 for supply of copies of investigation report of the CBI and other materials collected during the investigation and this Court, by its detailed order dated October 23, 2001, had rejected the said request, and, as the petitioner, Mr. D.K. Rao, wanted to challenge the said order, this Court had granted time to the petitioner to move the higher forum. It appears that the said order is not challenged by the petitioner,Mr. D. Kishore Rao or any other petitioners in the Apex Court. It is settled legal principle that, till the chargesheet is filed, the accused has no locus-standi to demand copies of the police papers.

14.4 It was also contended by the learned Senior Advocates for the petitioners that there was no dishonest intention on the part of the public servants and they might have recommended hike in the contractual rates of transportation of levy sugar and food grains due to error of judgment and, therefore, they cannot be held guilty of offences under Section 420 read with Section 120B of the Indian Penal Code. In my opinion, this submission also does not deserve any merit. No cogent reasons are recorded as per the provisions of the Rules of Business of the Government of Gujarat and the guidelines issued in the Budget Manual. The evidence collected during the investigation reveals that while processing the representation of the transporters of levy sugar the dissenting officers were not allowed to process the file. The Internal Financial Advisor was also not consulted which was mandatory as per the Business Rules. The petitioners public servants with a view to justify hike in the contractual rates of transportation of levy sugar and food grains had further extended tenure of the

contract by one year ignoring the fact that there was no provision to give extension in the contract for transportation of food grains beyond two months. The evidence collected during the investigation reveals that, when the contracts were subsequently cancelled, there was no disruption of PDS as feared by the public servants. The apprehension shown by the public servants that, if no hike in the contractual rates of transportation of levy sugar and food grains was given, the transporters had given a threat to proceed on strike and if the transporters had proceeded on strike, there would have been total collapse in the supply of food-grains and levy sugar and it would have invited great criticism on the administration as the Diwali festival was fast approaching, is totally baseless. It is worthnoting that previously, when the State Government had not acceded to such request for the hike in the transportation charges, the transporters had not resorted to any such illegal disruption of PDS and a show is tried to be made by the public servants that, if no hike in transportation charge was given, the transporters would have gone on strike and there would have been disruption of PDS.

14.5 The evidence collected by the Investigating Agency prima facie proves the involvement of the public servants who have approached this Court for quashing of the First Information report. At this stage, the Court is not required to discuss the whole evidence and materials collected during the investigation otherwise it would amount to appreciating the evidence before filing of the chargesheet. At this stage, the Court is not required to sift the evidence and to discuss in detail whether the charges levelled against the petitioners are going to result into their conviction. At this stage, the Court is only required to see whether any prima facie case is made out by the Investigating Agency to proceed against the petitioners for the offences alleged against them. In my view, the evidence collected by the Investigating Agency is sufficient to proceed against the petitioners for the offences alleged in the First Information Report. The other submissions made by the learned Senior Advocate for the petitioners relate to defence which may be raised by them at the trial. Therefore, this Court is not discussing in details with the submissions made by the Senior Advocates for the petitioners whether there was any dishonest intention on the part of the petitioners or the transport contractors in hatching a conspiracy and giving the hike in the contractual rates of transportation of levy sugar and food grains. The evidence collected during investigation prima facie proves that great financial implications were

caused to the State Exchequer by the illegal acts of the petitioners without verifying the genuineness of the representation and without following the Rules of Business.

14.6 The ratio laid down by the Supreme Court in other decisions on which the learned Senior Advocates for all the petitioners have placed reliance in support of their submissions is not distinguished or discussed in detail, as those submissions relate to the defence, which may be available to the petitioners at the trial and, therefore, in my considered opinion, on the facts of the case, those decisions are not relevant at this stage of deciding the applications filed for the quashing of the First Information Report. Hence, it is not necessary to discuss each and every decision individually.

15. This Court has carefully scrutinized the report dated October 12, 2001 and the material collected during the investigation which is also submitted for perusal of the Court. This Court is satisfied that the investigation is carried out in the right earnest and the Investigating Agency has collected detailed materials and evidence during the investigation which prima facie establish involvement of the petitioners of the offences alleged in the First Information Report. This Court is aware that at the stage of quashing of the First Information Report, a detailed discussion and sifting of evidence of the prosecution is not at all called for, as it would cause prejudice to the case of the petitioners at the trial. At this stage, the Court is only required to find out whether the First Information Report and the materials collected during the investigation prima facie involve the petitioners with the commission of the offences and whether a charge-sheet is required to be filed in the competent court. During the investigation carried out by the CBI, nearly 52 witnesses were examined and 282 documents were collected from various Departments and respective custodians of the documents. The investigation brought out that two distinct instances of the offences of the same nature had taken place. The first instance took place in the Department of Food, Civil Supplies & Consumer Affairs, Government of Gujarat, and the second instance took place in the Gujarat State Civil Supplies Corporation. The offence was committed in the year 1997-98 and its effect continued upto May 31, 1998.

16. The report and the evidence and materials collected during the investigation have disclosed the following facts:

16.1 The representation did not reflect the views of the Association in true sense. All the signatories were not genuine. Some were forgeries. Since all the signatories were not genuine, it was not done with the concurrence of all the representatives. Thus, all the signatories of the representation did not participate in the deliberations. It can, therefore, be concluded that it was not a true reflection of the views of the Transport Contractors Association, rather, it was engineered by a group of few interested transporters. The representation was dishonest and premature to put forth any supporting claim to demand an increase. No agency as claimed in the representation had revised the transport rates following a rise in the price of diesel. The increase in the price of diesel did not result in increase in price of spare parts, tyres/tubes and salary of staff. Hire charges of trucks did not vary consequent to the rise in the price of diesel. There was no precedent of awarding a rise in the contractual rates on account of a routine increase in the price of fuel. The precedents show that the PDS would not have been disrupted if no hike had been granted and the Government could have effectively countered any possible disruption of PDS. Clause 25 of the Contract Agreement for levy sugar expressly forbids any increase in the contract rate on the ground of increase in the price of fuel etc. The parties to the contract were bound by the terms and conditions of the agreement. Violation of the condition of the contract would entitle the Government to recover the damages. If the Government ex-parte decides an extension for another year, the Transporters were bound to carry out the work without demanding any increase. No extension could be granted at revised rates without inviting tender. Government had authority to cancel the contract at any time, instead of bowing to the pressure tactics of the Transport Association. Clause 38 of the contract agreement for food grains expressly forbids any increase in the contract rate due to increase in the price of fuel etc. Contract did not provide for any revision of rate. Contract did not cast any authority on the petitioners public servants to extend the tenure at the enhanced rate. No evaluation of the provisions of the contract was carried out while granting revision of rates and tenure of the contract. No authority was recorded in the file while granting a hike in the rate and extending the tenure. The representation was not a genuine one airing the opinion of the Transport

Contractors Association. No Government/Semi-Government organisation effected an increase in the contract rates. An upward revision in the contract rate was not necessary in view of Clause 25 of the Agreement. A rise in the price of diesel in the instant case did not result in the escalation in the price of inputs such as tyre, tubes, salary to staff etc. The representation of the Transporters association was not processed properly by the petitioners public servants. Assistant Director was bypassed in processing the file to avoid a dissent opinion. There were no precedents of hike in the transport rates in tune with the present hike. There was no precedents of disruption of PDS by Transport Operators or refusing to entertain their demands. The Government had enough alternatives to counter such a movement than bowing to the pressure of a few transporters. The representation was considered subduing the authority of the State Government to the threat of disruption of PDS. The practice followed by similar organisations was not looked into. No calculation was done to ascertain the impact of a rise in the price of diesel on the operational cost. Formula for revision of rates devised by the Transport Department was ignored. A rise by 11.47% in the transport rates would have neutralised the impact of a rise in the price of diesel by 28%. The canons of financial propriety were violated. No cogent reason justifying the hike proposed was presented by the petitioners public servants. The Finance Department was not consulted violating the financial rules. No negotiation to find reason with the representation was carried out. The petitioners Ministers increased the rate of hike suggested by the petitioners-public servants without recording any justification. Extension of contract with no further hike cause was superfluous. The petitioners public servants left no scope for re-tendering by unauthorisedly extending the period of contract by one year at enhanced rate.

16.2 An amount of Rs.85,20,929/- was lost to the exchequer by awarding the increase in transport cost of levy sugar. A loss of Rs.1,33,85,048/- was averted by cancelling the contract with effect from 30.6.1998. The total financial implication was Rs.2,19,05,972/-. The expenditure in the above manner was not worked out by the petitioners public servants. An extra amount of Rs.1,59,82,682/- was incurred by the State Exchequer by awarding the increase in transport cost of food-grains. A probable loss of Rs.1,90,29,494/- was averted by canceling the contract with effect from 31.5.1998. The total financial implication was of Rs.3,50,12,177/-. The expenditure in the above manner was not worked out by the

petitioners-public servants.

16.3 In view of the facts, circumstances and evidence on record, it is established that the decision taken by the petitioners public servants in allowing increase in the existing transport contract rates for the year 1997-98 and further extending the tenure of the contract upto 31.3.1999 was arbitrary, unjustified and violative of the condition of the transport contract. It has been done by the petitioners public servants by abusing their official position and in furtherance to a criminal conspiracy with the petitioners transport contractors to cause undue pecuniary gains to the private transport contractors at the cost of the public exchequer. In order to perpetuate the offence, the established procedure of administration, Rules of Business and Financial Management were deliberately violated. Thus, in the matter of increase in transport cost of levy sugar and food grains, the acts of commission and omission of the petitioners public servants and the petitioners private transport contractors constitute offences of criminal conspiracy, cheating, misconduct, abuse of official position which are punishable under Sections 120B, 420 Indian Penal Code, Section 13(2) read with 13(1)(d) of the Act. In view of the evidence collected by the CBI during the investigation against the petitioners, the First Informatino Report bearing RC 31(A)2000-GNR registered in the CBI, Gandhinagar Branch, on November 15, 2000, cannot be quashed by invoking the inherent powers under Section 482 of the Code.

17. As a result of foregoing discussion, Criminal Misc. Applications Nos.1038 of 2001, 3760 of 2001 and 4865 of 2001 filed by the petitioners-public servants are dismissed. Rule is discharged in each application. The interim relief stands vacated in each application forthwith.

Criminal Misc. Application No.1278 of 2001 stands dismissed as withdrawn without prejudice to the rights and contentions of the petitioner and reserving the liberty to the petitioner to raise such contentions as and when necessary. Rule is discharged. The interim relief stands vacated.

Criminal Misc. Application No.5285 of 2001 filed by the private transport contractors is also dismissed. Notice is discharged. The ad-interim relief stands vacated forthwith.

The CBI is permitted to follow the rest of the proceduree for obtaining sanction to prosecute the public servants from the Competent Authority and to file

chargesheet in the Competent Court.

December 11, 2001 (M.H. Kadri, J)
(swamy)